

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

_____)
IN THE MATTER OF:)
) ADMINISTRATIVE ORDER
ATLANTIC RICHFIELD COMPANY,) ON CONSENT
a Delaware Corporation,)
Respondent) Fourteenth Amendment
)
SITE NO. 23)
)
) EPA Docket No.
) CERCLA-VIII-90-07
)
) Remedial Investigation
PROCEEDING UNDER SECTIONS 104,) Completion/Feasibility
122(a), and 122(d)(3) OF THE) Study
COMPREHENSIVE ENVIRONMENTAL)
RESPONSE, COMPENSATION, AND)
LIABILITY ACT, AS AMENDED, 42 U.S.C.)
§§ 9604, 9622(a), AND 9622(d)(3).)
_____)

AMENDMENT TO ADMINISTRATIVE ORDER ON CONSENT
CERCLA-VIII-90-07 REGARDING CONTINUING REQUIREMENTS FOR THE FUNDING OF
WATER QUALITY SAMPLING

The United States Environmental Protection Agency (EPA) and the Atlantic Richfield Company (ARCO) hereby agree that:

In February 1993, ARCO and EPA, in consultation with the State of Montana Department of Environmental Quality (MDEQ) (formerly the State of Montana Department of Health and Environment Sciences (MDHES)) executed the Fourth Amendment to the Milltown Order. The Fourth Amendment required ARCO to fund the long-term surface water monitoring plan for the Upper Clark Fork River Basin (UCFRB) for a period of three years, from 1993 through 1995, as described more specifically in the Fourth Amendment. On May 13, 1996, ARCO and EPA executed the Seventh Amendment to the Milltown Order, which required ARCO to fund the long-term surface water monitoring plan and related reporting for the UCFRB for 1996, and fund geomorphology study

efforts for the Clark Fork River area for 1996. On June 12, 1997, ARCO and EPA executed the Eighth Amendment to the Milltown Order, which required ARCO to fund the long-term surface water monitoring plan and related reporting for the UCFRB for 1997, and to fund geomorphology studies related to the Clark Fork River area for 1997. On March 23, 1998, ARCO and EPA executed the Ninth Amendment to the Milltown Order, which required ARCO to fund the long-term surface water monitoring plan and related reporting for the UCFRB for 1998. On January 8, 1999, ARCO and EPA executed the Tenth Amendment to the Milltown Order, which required ARCO to fund the long-term surface water monitoring plan and related reporting for the UCFRB for 1999. On January 11, 2000, ARCO and EPA executed the Eleventh Amendment to the Milltown Order, which required ARCO to fund the long-term surface water monitoring plan and related reporting for the UCFRB for 2000. On July 26, 2001, ARCO and EPA executed the Twelfth Amendment to the Milltown Order, which required ARCO to continue to fund the long-term water monitoring plan and related reporting for the UCFRB for 2001. On October 5, 2002 ARCO and EPA executed the Thirteenth Amendment to the Milltown Order, which required ARCO to continue to fund the long-term monitoring plan and related reporting for the UCFRB for 2002.

There continues to be a need for coordinated water quality sampling and analyses of the UCFRB, with appropriate reporting of the results of such analyses for use in the efficient planning of Superfund remediation efforts; and

To provide for the continuation of some of this sampling, the Milltown Reservoir Sediments Site Administrative Order on Consent, Docket No. CERCLA-VIII-90-07 (Milltown Order) shall be amended as follows, pursuant to Section IX.T.2., to include funding requirements for some sampling and study.

NOW, THEREFORE, it is ordered as follows:

I. Findings of Fact

EPA, in consultation with MDEQ, has made the following findings of fact:

The findings of fact entered under the original Milltown Order, Section VI., are incorporated by reference into this Consent Order Amendment.

II. Conclusions of Law

Based on the Findings of Fact, above, and based on the administrative record for the Milltown Reservoir Sediments Site, reservoir sediments and Clark Fork River operable units, EPA, in consultation with MDEQ, has made the following conclusions of law:

The conclusions of law entered under the Milltown Order, Section VII., are hereby incorporated by reference.

III. Determinations

Based on the Findings of Fact and Conclusions of Law set forth above, and the administrative record, EPA, in consultation with MDEQ, has determined the following:

1. The actions required by the Fourteenth Amendment are necessary to protect the public health or welfare or the environment, are in the public interest, are not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and will expedite effective remedial action and minimize litigation.
2. The Respondent is financially secure and able to perform its required actions, as set forth in this Fourteenth Amendment.
3. The Respondent denies any and all legal or equitable liability under any federal or state statute, regulation, ordinance, or common law for any response costs, damages, or other liability caused by or arising out of conditions at or arising from the Milltown Site, except as provided in Paragraphs I.3. and IX.M.4. of the Milltown Order. Notwithstanding Respondent's consent to jurisdiction, respondent does not admit the Findings of Fact, Conclusions of Law, Determinations, or any other allegations contained in this Fourteenth Amendment, and such Findings, Conclusions, and Determinations shall not be used in any other proceeding, other than proceedings to enforce the Fourteenth Amendment, or for any other purpose except to establish jurisdiction for this Amendment.

IV. Order

1. ARCO agrees to continue to fund some tasks associated with the long-term surface water monitoring plan and appropriate reporting, as that plan and reporting are further described in Exhibit A attached to the Fourteenth Amendment to the Milltown Order for an additional time period, beginning in October 2003; by making a single payment to EPA in the amount of three hundred and twenty-two thousand and five hundred dollars (\$322,500.00) (see attachment).

EPA has established and maintains a site specific special account, which shall be used solely for the purpose of receiving, managing, and disbursing funds received pursuant to the Fourth Amendment, the Seventh Amendment, the Eighth Amendment, the Ninth Amendment, the Tenth Amendment, the Eleventh Amendment, the Twelfth Amendment, the Thirteenth Amendment and the Fourteenth Amendment as a cash out agreement. EPA shall maintain and have sole control over its special account. EPA's site specific special account was established pursuant to the authority granted to EPA in Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3). EPA agrees promptly to provide 100% of the payments described in this Fourteenth Amendment to the United States Geological Survey (USGS), through an amendment to the existing Inter-Agency Agreement (IAG) to be established solely for funding pursuant to the Fourteenth Amendment. EPA agrees promptly to provide a copy of that IAG amendment, as executed, to ARCO.

2. EPA further agrees that such funding shall be used solely for personnel and operational expenses necessary for continuing to implement certain tasks associated with the long-term surface water monitoring plan, the U.S. Geological Survey Proposal for Preparation of an Interpretive Report and Continuation of Long-Term Monitoring in the Upper Clark Fork Basin, Montana, Exhibit A-1 to the Seventh Amendment, as modified by the USGS letter of January 29, 1996, Exhibit A-2 to the Seventh Amendment, and the document entitled Clark Fork Surface Water Monitoring Tasks to be Funded by ARCO, Exhibit A-3 to the Seventh Amendment, as further described in Exhibits A and B to the Eighth Amendment, Exhibit A to the Ninth Amendment, Exhibit A to the Tenth Amendment, Exhibit A to the Eleventh Amendment, Exhibit A to the Twelfth Amendment, Exhibit A to the Fourteenth Amendment and in accordance with the budget mutually agreed to by EPA and ARCO. EPA shall direct USGS to use the funding only for such purposes. If ARCO believes that such funding is not being used in accordance with this Paragraph, it may invoke the provisions for dispute resolution found in Section IX.J. of the Milltown Order.

3. EPA will direct USGS simultaneously to provide EPA, ARCO and MDEQ with the USGS quarterly progress reports for the long term monitoring project. Such progress reports will describe all of the tasks being conducted and the status of each task, and will include a technical narrative tied to the financial summary for each task for the previous quarter, as well as the year-to-date amount expended for each task and the amount allocated for each task.

4. EPA will direct USGS simultaneously to provide EPA, ARCO and MDEQ with copies of all monitoring reports as soon as those documents are available.

5. Within twenty (20) days after the effective date of this Fourteenth Amendment, ARCO will make the single payment to EPA, described in Paragraph IV.1.

6. The payment required by this Fourteenth Amendment shall be made in the form of a check, made payable to "EPA Hazardous Substance Superfund," and shall reference "Clark Fork General Superfund Site (Site #99) - Cash Out Payment for Surface Water Quality Monitoring - 2003 payment," and shall be forwarded, via overnight delivery, to:

Environmental Protection Agency 360859
Mellon Client Service Center Rm 670
500 Ross Street
Pittsburgh, PA 15262-0001

A cover letter shall accompany the payment. The cover letter shall reference this Milltown Order Fourteenth Amendment including the Milltown Order Docket No. CERCLA-VIII-90-07, and contain the information described in this Paragraph, and shall identify the purpose for remittance of the payment. A copy of the cover letter and check shall be sent to:

David Sturn, Cost Recovery Coordinator
U.S. EPA Montana Office
Federal Building
10 W. 15th Street, Suite 3200
Helena, MT 59626

ARCO understands and agrees that EPA may enforce this Fourteenth Amendment if payment is not received as described in this Fourteenth Amendment, and that no invoice demand letter, or other communication, other than that described in this Amendment, is required to be sent by EPA.

ARCO also understands that EPA has requested payment for other tasks and sampling requirements, and that this agreement does not address these additional requests. A subsequent amendment for 2003 expenditures may occur after conclusion of further discussions.

7. For purposes of this Fourteenth Amendment only, ARCO has no performance obligation or other requirements under the Milltown Order except for funding of the surface water quality tasks for the one-year period. In particular, no Stipulated Penalties (Section IX.H.), no Additional Work (Section IX.A.3. through IX.A.8.), and no reporting, approval, access, sampling, or data quality requirements (Section IX.A., B., C., D., G., and H., or any other) are effective for purposes of this Fourteenth Amendment. Section IX.J. (Dispute Resolution) is effective for all disputes relating to this Fourteenth Amendment. Section IX.L. (Reimbursement of Costs) is not effective with respect to any costs funded pursuant to this Fourteenth Amendment.

In the event of any inconsistency between this Fourteenth Amendment and the Milltown Order, the terms and conditions of this Fourteenth Amendment shall control. Except as specifically provided by this Fourteenth Amendment, the provisions of the Milltown Order and the First through Twelfth Amendments shall remain in effect.

8. For purposes of administering this Fourteenth Amendment, each of the parties appoints the following person as its duly authorized representative:

For ARCO:

Robin Bullock
Mining Manager
Atlantic Richfield Company
307 E. Park Ave., Suite 400
Anaconda, MT 59711

For EPA:

Russ Forba - RPM
U.S. EPA
Federal Building
10 W. 15th Street, Suite 3200
Helena, MT 59626

9. This Fourteenth Amendment shall be effective upon signing by both EPA and ARCO. This Fourteenth Amendment can be modified only through a written agreement signed by EPA and ARCO.

10. In case of any inconsistencies between the terms of Exhibit A and this Fourteenth Amendment, the terms of the Amendment shall control.

11. Each signatory to this Fourteenth Amendment states that he or she is fully authorized to enter into the terms and conditions of this Amendment and to bind legally the party represented by him or her to this Fourteenth Amendment.

IT IS SO AGREED:

2-07-03
Date

SIGNED
Robin Bullock
Mining Manager
Atlantic Richfield Company
307 E. Park Ave., Suite 400
Anaconda, MT 59711

IT IS SO ORDERED:

02/20/03
Date
(Effective Date)

SIGNED
John F. Wardell, Director
Montana Office
U.S. Environmental Protection Agency
Region VIII
Federal Building
10 W. 15th Street, Suite 3200
Helena, MT 59626

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENT PLEASE CONTACT THE
REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON
FEBRUARY 21, 2003.**

